

Award No. 12715
Docket No. MW-11883

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it established and placed in service a mechanized extra gang to perform track work on the Cumberland Valley Division without bulletining and assigning the position of Extra Gang Foreman in accordance with the provisions of the Agreement rules.

(2) The Carrier further violated the effective Agreement when it assigned Assistant Foreman A. L. Phipps to perform the duties of an Extra Gang Foreman in supervising and directing the work of the employes on said mechanized extra gang and failed and refused to allow Mr. Phipps the Extra Gang Foreman's rate of pay for services thus rendered.

(3) Because of the violation referred to in Part (1) of this claim, the Carrier now be required to bulletin and assign the position of Extra Gang Foreman in accordance with the Agreement rules.

(4) Mr. A. L. Phipps now be allowed the difference between what he received at the Assistant Foreman's rate and what he should have received at the Extra Gang Foreman's rate account of the violation referred to in Part (2) of this claim retroactive sixty days from September 19, 1958, and to continue until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: During May or June 1958, the Carrier established and placed in service a mechanized extra gang, consisting of two Assistant Foremen and a number of Machine Operators, on its Cumberland Valley Division. No Foreman's position for this gang was established.

The positions of Assistant Foreman were bulletined, with headquarters in outfit cars. One of such positions was assigned to the claimant, Mr. A. L. Phipps, but was given a separate gang number from any other section or district gang on the aforementioned division.

was established on carrier's Cumberland Valley Division. On June 25, 1957, A. L. Phipps and Ed Mills were assigned as Assistant Foremen. The gang was abolished on October 16, 1959.

POSITION OF CARRIER: Carrier asserts there has been no violation of the Maintenance of Way Agreement of September 1, 1947, as revised to August 1, 1952, in the handling as given.

At the time this mechanized gang was set up on June 25, 1957, two assistant foremen were assigned, one to work continuously with the operator of the power tamper jack and the other to give general supervision to the machine operators and other employees assigned therein. This action created no violation of the agreement, for the reason that these mechanized gangs are scheduled to work on territory which is under the direct supervision of a District Section Foreman. These assistant foremen merely carry out and are responsible to the district section foreman in performing work under his overall supervision. The mechanized gang consisted of machine operators and the number of section laborers required were drawn from the local or district section gangs.

In handling on the property employees have not alleged the violation of any particular rule of the agreement. Carrier believes none has been violated. It is the position of the carrier, therefore, that the claim is without merit and should be denied.

OPINION OF BOARD: Claim in this matter arose out of the establishment by the Carrier of a mechanized extra track gang on its Cumberland Valley Division which operated as an autonomous group with two assistant foremen until it was abolished October 16, 1959.

Contention was made by the Organization that one of the assistant foremen A. L. Phipps should have received the pay of an Extra Gang Foreman for he was in fact that.

A review of the record discloses A. L. Phipps was required to perform the supervision duties of a foreman and did not receive the direction and guidance of "the Section and/or District Gang Foreman upon whose territory the mechanized Extra gang was working on any given date."

Further the record discloses a statement as follows:

"There is no comparable situation to this existing anywhere else on the L & N Railroad. Other division engineers can see that it is not in harmony with agreement rules and do not engage in this practice."

That was contained in a letter from the General Chairman dated March 9, 1959 and is written to the Director of Personnel.

This letter which served to point out the fact that this mechanized extra gang had been treated differently by the Carrier than similar mechanized gangs on other divisions was not controverted by the Carrier.

The claim is sustained except that Part 3 has become moot due to abolishment of the gang.